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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 08.02.2019

+ CRL.REV.P. 787/2018 & CrI. M.A. 31821/2018

SMT. SONIA SINGH

..... Petitioner

versus

SH. HARPAL SINGH

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Vivek Aggarwal, Adv.

For the Respondent : Mr. Rohit K. Naagpal, Adv. with respondent in person.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 18.05.2018 whereby the appellate court set aside the order dated 21.02.2018 passed by the trial court. The Trial Court had directed that the applications filed by both the parties under Section 25 (2) of the Domestic Violence Act shall be taken up for consideration after parties lead evidence.

2. The petitioner was granted maintenance by order dated 24.09.2009 in the sum of Rs. 15,000/-. The order of maintenance was challenged by the respondent before the High Court. The order was

challenged, *inter-alia*, on the ground that the petitioner was qualified and was not working and as such was disentitled to maintenance. Before the High Court, respondent stated that respondent would be in a position to secure an employment for the petitioner.

3. In view of the submissions made by the respondent that he shall secure a job for the petitioner, the High Court by order dated 29.11.2010 in Crl. Rev. P. 241/2010 directed as under:-

“The counsel for the petitioner submits that the respondent was well qualified and she was M.A B.Ed and there was lot of posts of teachers lying vacant and respondent was entitled to a job but she was deliberately not getting a job. However, respondent denies that she was deliberately not taking a job. She submits that she was well willing to take up a job of a teacher in any private/government/semi government school if she gets an opportunity. The counsel for the petitioner submits that the petitioner shall ensure a job for the respondent. Respondent shall give duly signed application along with copies of her testimonials to the petitioner’s counsel Mr.Kamlesh Kumar, Chamber No.522, Western Wing, Tis Hazari Courts, Delhi within one week from today and the day the offer letter of joining is posted to respondent, the petitioner shall be at liberty to move an application for cancellation of maintaining order. If respondent does not join despite appointment letter, she shall not be entitled to claim maintenance.

With above directions, this petition stands disposed of.”

4. The order of the High Court was challenged before the Supreme

Court by the petitioner unsuccessfully.

5. Subsequently an application under Section 25(2) of the DV Act was filed by the petitioner seeking enhancement of maintenance on the ground that the salary of the respondent has substantially enhanced and there were changed circumstances.

6. An application under Section 25(2) of the DV Act was also filed by the respondent contending that there were several concealments and misrepresentations made by the petitioner with regard to her job status and as such the order dated 24.09.2009 was liable to be recalled.

7. The trial court by order dated 21.02.2018 *inter alia* held as under:

“.....Since both the parties have alleged that the financial status of both parties have changed and it is seen that the judgment dt. 24.09.09 was decided after leading the evidence. Both petitions can be decided only leading evidence. It is made clear that evidence shall be led only on financial status of the parties and not on the facts of the cruelties or domestic violence as the same stands settled in judgment dt.24.09.09, as same has not been set aside till date.

In these; circumstances, both petitions shall be decided together after leading-evidence. Parties are directed to file their income affidavit in the form of latest Kusum Sharma format along with bank statements etc. from three years prior to date of filing of present, petitions along, with their; affidavits in. evidence. Since the

petition was initially filed by the applicant Sonia Singh, the matter is listed for evidence by way of affidavit for appellant Sonia Singh.”

8. The trial court, noticing the conflicting allegations made by the respective parties in their respective applications filed under Section 25(2) of the DV Act, was of the view that admittedly financial status of both the parties had changed since 19.04.2009 and since judgment dated 24.09.2009 was a final judgment in the claim for maintenance and had been passed after evidence was led by the parties, the respective applications under Section 25(2) of the DV Act could be disposed of only after taking evidence.

9. The trial court directed parties to lead evidence with regard to their respective financial status and not other aspects, *inter-alia* cruelty or domestic violence, which stood settled by judgment dated 24.09.2009.

10. Trial court directed the parties to file their income and expenditure affidavits in the format in terms of judgment in FAO No. 369/1996 titled *Kusum Sharma Vs. Mahinder Kumar Sharma*.

11. Aggrieved by this order, respondent filed an appeal before the appellate court which has been disposed of by the appellate court by impugned order dated 18.05.2018.

12. The appellate court, *inter-alia*, held as under:

“The aforementioned orders passed by the Hon'ble. High Court as well as the Hon'ble Supreme Court and the affidavit filed by the respondent were available on record before the Trial Court. The application of the appellant filed under Section 25 (2) of the D.V, Act could have been disposed off on the, basis of these orders/affidavit. Hence, there was no reason or occasion for the Trial Court to defer the decision on the application and to call upon parties to lead evidence in this regard.

Hence, the impugned order of the Ld. MM cannot be sustained. Same is hereby set-aside. The petition filed by the appellant under Section 25 (2) of the D.V, Act is hereby allowed. The maintenance order dated 24.09.2009 is hereby cancelled. The appellant is not liable to pay any maintenance to the respondent w.e.f. 21.12.2010.

It needs to be noted here that respondent has very conveniently and mischievously concealed and withheld from the Trial Court the factum of her employment as government teacher till 29.01.2016 i.e. for about six months. Even in her petition under Section 25 (2) of D.V. Act, filed on 30.05.2013 pursuant, to the liberty given to her by the Hon'ble Supreme Court as aforesaid, she has stated herself to be unemployed and having no source of income except the maintenance being given to her by the appellant in terms of the judgment dated 24.09.2009. The Trial Court shall deal with this aspect while deciding the respondent's petition under. Section 25 (2) of D.V. Act and pass appropriate orders against her with regards to the said concealment of material facts.”

13. The appellate court has set aside the order of the trial court primarily on the ground that the orders passed by the High Court and

Supreme Court as also the affidavit filed by the respondent was available on record and this in view of the appellate court was sufficient material available before the trial court for deciding the applications under Section 25 (2) filed by the parties.

14. Perusal of the order of the High Court as also the other documents placed on record shows that the Appellate court clearly fell in error in passing a direction directing the trial court to dispose of the applications solely on the basis of the orders in the earlier round of litigation as also the affidavit.

15. It is an admitted position that the financial status of both the parties has changed post the initial determination of the maintenance by order dated 24.09.2009. The order dated 24.09.2009 was an order passed after the parties had led their respective evidence.

16. Parties are also not at consensus with regard to the respective incomes and expenditures of each other.

17. Since the respective income and expenditure of both the parties is in dispute, the trial court did not commit any error in directing the parties to lead evidence.

18. Further, in the earlier round, the High Court had directed that in case the respondent secures a job for the petitioner, petitioner would be obliged to take up the employment and if she fails to take the employment she would forfeit her right of maintenance.

19. The contentions of learned counsel for the respondent is that respondent had secured a job for the petitioner in Anglo-Indian Convent School but she failed to take up the employment, she forfeited her right of maintenance.

20. Learned counsel for the petitioner submits that the documents by which respondent alleges that he had secured the employment was disputed by the said school itself and they had issued a letter that no such employment was given and that the school never issues letters in such format and also that there was no vacancy available in the school.

21. The contention that respondent has secured a job and the petitioner had refused to accept the same and in terms of the stipulation of the High Court she would forfeit her right of maintenance, is disputed by the petitioner. Petitioner also disputes the letter issued by the school based on the certificate issued by the School. These pleas would certainly require evidence.

22. In that view of the matter, the trial court did not commit any error in directing the parties to lead evidence, prior to disposal of the applications filed under Section 25 (2) of the Domestic Violence Act. Further the financial status of the parties, *inter-se* is also in dispute, therefore also there is no infirmity in the order of the Trial Court directing the parties to lead evidence.

23. The orders of the High Court and Supreme Court in the earlier round and the affidavits of the parties, do not settle the factual disputes that have arisen between the parties, after the passing of said orders. Accordingly, the impugned order of the Appellate Court, that sufficient material was available before the trial court to decide the applications under Section 25(2) filed by both the parties, clearly cannot be sustained.

24. The appellate court has already noticed that there is an allegation by the respondent that petitioner has concealed her employment status and has filed false affidavit. Considering this aspect, the appellate court has directed the trial court to take the same into account at the time when the application under Section 25 (2) would be considered. Whether the petitioner has made an incorrect statement or not and if so, what is the effect of the same, is to be considered by the trial court at the time of consideration of the applications under Section 25(2).

25. In view of the above, the impugned order dated 18.05.2018 in so far as it sets aside the order of the trial court, directing the parties to lead evidence and further directs the trial court to consider the application solely on the basis of the orders in the earlier round as also the affidavit is set aside.

26. Learned counsel for the petitioner submits that the respondent had not paid any maintenance since 2014 and consequent to the

impugned order dated 18.05.2018, the execution petitions filed by the petitioner have been disposed of. He submits that he shall be seeking revival of the execution petitions. The statement is taken on record.

27. The petition is disposed of in the above terms.

28. It is directed that both the parties shall appear before the trial court on 08.03.2019 (the date before the Trial Court).

29. In view of the fact that the dispute between the parties is pending since 2009, trial court is directed to expedite the proceedings and endeavor to conclude the same within a period of six months from the next date before it.

30. Order *Dasti* under signatures of the Court Master.

FEBRUARY 08, 2019
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SANJEEV SACHDEVA, J